IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

ALEXANDER MOORE, et al.,

Plaintiffs,

v.

URBAN OUTFITTERS WHOLESALE, INC., D/B/A ANTHROPOLOGIE, a Pennsylvania corporation, et al.,

Defendants.
_____/

No. C 13-02245 JSW

ORDER GRANTING MOTION TO REMAND

This matter comes before the Court upon consideration of the motion to remand filed by Plaintiff Alexander Moore ("Plaintiff"). The Court has considered the parties' papers, relevant legal authority, and the record in this case, and it HEREBY GRANTS Plaintiff's motion to remand.

BACKGROUND

On April 10, 2013, Plaintiff, individually and on behalf of other members of the public similarly situated, filed a complaint against Defendant Urban Outfitters Wholesale, Inc. d/b/a Anthropologie ("Urban Outfitters") in the Superior Court of California, for the County of San Francisco. Plaintiff and the members of the putative class he seeks to represent are current and/or fomer hourly managers who work at Anthropologie stores. The complaint alleges seven causes of action for violations of California Labor Codes for unpaid overtime, unpaid minimum wages, unpaid meal rest premiums, unpaid rest period premiums, wages not timely paid upon termination, non-complaint wage statements, and for violation of California Business and

Professions Code Section 17200, *et seq.*

On May 16, 2013, Urban Outfitters filed a notice of removal pursuant to 28 U.S.C. Sections 1332. (Notice of Removal ¶¶ 8-10.) Urban Outfitters contends that the Court has jurisdiction under the Class Action Fairness Act of 2005 ("CAFA"), which grants federal district courts original jurisdiction over certain class action suits. (*Id.*)

The Court shall address additional facts as necessary in the remainder of this Order.

ANALYSIS

A. Legal Standards Relevant to Removal Jurisdiction.

"[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant . . . to the district court of the United States for the district and division embracing the place where such action is pending." *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 7-8 (1983) (citation omitted); *see also* 28 U.S.C. § 1441. However, federal courts are courts of limited jurisdiction. *See, e.g., Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).

The burden of establishing federal jurisdiction for purposes of removal is on the party seeking removal, and the removal statute is construed strictly against removal jurisdiction. *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004); *see also Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). "Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance." *Gaus*, 980 F.2d at 566. In order to determine whether the removing party has met its burden, a court may consider the contents of the removal petition and "summary-judgment-type evidence." *Valdez*, 372 F.3d at 1117. It is well established that a court must evaluate whether it has jurisdiction based on the circumstances that exist at the time the notice of removal is filed. *See, e.g., Sparta Surgical Corp. v. National Ass'n of Securities Dealers, Inc.*, 159 F.3d 1209, 1211 (9th Cir. 1998).

The Class Action Fairness Act ("CAFA") provides that district courts have original jurisdiction over any class action in which (1) the amount in controversy exceeds $5,000,000, (2) any plaintiff class member is a citizen of a state different from any defendant, (3) the primary defendants are not states, state officials, or other government entities against whom the

district court may be foreclosed from ordering relief, and (4) the number of plaintiffs in the class is at least 100. 28 U.S.C. §§ 1332(d)(2), (d)(5).

B. Motion to Remand.

For purposes of removal under CAFA, the parties do not dispute minimal diversity or that the class comprises at least 100 persons. Thus, the amount in controversy, which must exceed $5,000,000, is the only statutory requirement at issue here.

Plaintiff does not allege a specific amount in controversy in his complaint but, without any evidence of bad faith, does plead that the amount is less than $5,000,000, exclusive of interest and costs. (*See* Compl. at ¶ 1.) The Court finds that Urban Outfitters bears the burden of showing by a preponderance of the evidence that the amount in controversy exceeds $5,000,000. *See Lowdermilk v. U.S. Bank National Ass'n*, 479 F.3d 994, 997 (9th Cir. 2007) (holding that the preponderance of the evidence standard applies in situations in which the plaintiff does not seek a specific amount in damages); *Guglielmino v. McKee Foods, Inc.*, 506 F.3d 696, 699 (9th Cir. 2007); *see also Trahan v. U.S. Bank National Ass'n*, 2014 WL 116606, at *4-5 (N.D. Cal. Jan. 13, 2014) (White, J.) (holding that the preponderance of the evidence standard applies post-*Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 1348-49 (2013), and *Rodriguez v. AT&T Mobility Services, LLC*, 728 F.3d 975 (9th Cir. 2013)).

Here, to demonstrate the amount in controversy, Urban Outfitters estimates the amount in controversy to be over the jurisdictional prerequisite by estimating Plaintiff's unpaid overtime and minimum wage claims to total over a million dollars. Urban Outfitters estimates that Plaintiff seeks one hour of overtime per workweek at an estimated overtime rate of $21,51 (150% of the average regular hourly rate) and half an hour of overtime per workweek at an estimated overtime rate of $28.68 (200% of the average regular hourly rate), for an estimated workforce of 92 during the alleged four-year period. ((Notice of Removal ¶ 21.) Urban Outfitters then estimates Plaintiff's claim for failure to pay straight-time wages at one hour per employee per workweek, at an estimated hourly wage of $14.34, for an estimated workforce of 92 per year during the alleged four-year period. (*Id.*)

However, such an estimation, which assumes time worked, estimates missed overtime per week without reference to actual workweeks worked, and estimates number of employees working at any one time, is unsupported by underlying facts, is speculative, and falls short of meeting the preponderance of the evidence burden. *See Abrego Abrego v. The Dow Chemical Co.*, 443 F.3d 676, 689 (9th Cir. 2006); *Roth v. Comerica Bank*, 799 F. Supp. 2d 1107, 1128-1130 (C.D. Cal. 2010). Given that Urban Outfitters are in the possession of the relevant payroll records, it would have been possible for the company to provide a more accurate estimated accounting and not rely upon extrapolation and speculation. *See, e.g., Vigil v. HMS Host USA, Inc.*, 2012 WL 3283400, at *5 (N.D. Cal. Aug. 10, 2012). Plaintiff does not allege that every putative class members was entitled to overtime, does not allege the frequency in which the overtime violations occurred, and does not assert the frequency rates for his meal and rest break violations. Urban Outfitters' calculations require the Court to make assumptions that lack evidentiary support. *See Roth*, 799 F. Supp. 2d at 1126 (holding that under the preponderance of the evidence standard, courts require that "defendants adduce[] evidence that would permit the court to draw an inference that . . . violations occurred with the frequency defendants presume.").

For these reasons, the Court finds that Urban Outfitters has not met its burden to demonstrate that the amount in controversy exceeds $5,000,000 by a preponderance of the evidence. Thus, the Court remands this action to state court.

CONCLUSION

For the reasons stated herein, the Court GRANTS Plaintiff's motion to remand this action to the County of San Francisco Superior Court. The Clerk shall close the file.

IT IS SO ORDERED.

Dated: May 28, 2014

JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE